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ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi-2, the 24th October, 1957/Kartika 2, 1879.

S.R.O. 3428.—Whereas the election of Dr. Balkrishna Vishwanath Keskar, Minister for Information and Broadcasting, India, New Delhi as a member of the House of the People from the Musafirkhana Constituency, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Haji Abdul Wahid son of Hafiz Abdul Ghani, resident of Mohalla Khairabad, District Sultanpur, Uttar Pradesh ;

And whereas the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has sent a copy of its order in the said election petition to the Commission;

Now, therefore, the Election Commission hereby publishes the said order of the Tribunal.

IN THE COURT OF MEMBER, ELECTION TRIBUNAL, ALLAHABAD

Present : Shri K. K. Banerji.

ELECTION PETITION NO. 451 OF 1957

Haji Abdul Wahid *V.* Dr. B. V. Keskar and others.

Parties: Messrs. S. C. Khare & Iqbal Ahmad—*for the Petitioner.*

Messrs. G. S. Pathak, Sheo Charan Lal, Jagdish Swarup and
R. S. Pathak—*for the Respondent No. 1.*

This is an application under section 90 (3) of the Representation of the People Act filed by Respondent No. 1, stating that as the petitioner has not complied with the provisions of section 117 of the Act, inasmuch as he did not deposit Rs. 1,000 in favour of the Secretary to the Election Commission as security for the costs of the petition, his petition was liable to be dismissed forthwith on that ground, alone.

On receiving this application, I called for the original Government Treasury chalan which has now been received by me. This receipt, which is in Form No. 43-A, F.H.B., Vol. V, Part II, has several headings, of which

heading No. 3 is the relevant one. From the other headings, or, columns it would appear that a sum of Rs. 1,000 had been deposited by the petitioner, Abdul Wahid, under the head of account, "Central (Civil) section—Deposits and Advances Part II Deposits not bearing interest (C) other deposits accounts—Civil Deposits, Revenue Deposits, Deposits for Election Petitions". The heading of column No. 3 is,

"Full particulars of the remittance and of authority (if any)."

In this column is written :—

"Security-money for filing Election Petition of Lok-Sabha Musafirkhana Constituency No. 358."

Now, section 117 of the Representation of the People Act lays down as follows :—

"The petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of one thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the costs of the petition."

The requirements under this section are, therefore, as follows :—

- (1) The treasury receipt must show a deposit of Rs. 1,000.
- (2) It should also show that the deposit had been made by the petitioner ;
- (3) It should show that the deposit was made either in a Government treasury or in the Reserve Bank of India ;
- (4) It would further show that the deposit was made in favour of the Secretary to the Election Commission ; and
- (5) It would lastly show that the deposit was made as security for the costs of the petition.

There is no dispute about the requirements under headings 1, 2 and 3. The receipt does not show that the deposit was made in favour of the Secretary to the Election Commission. About the security money, it is vague in this sense that it is not specifically mentioned that the security money was deposited as security for the costs of the petition.

I have already held in Election Petition No. 192 of 1957, Sarvshri Mahendra Pal Singh and Sheobaran Singh *V.* Shri Mohan Lal Gautam and others, that the requirements under section 117 are of a mandatory character. In that case also it had not been mentioned in column No. 3 that the deposit was made in favour of the Secretary to the Election Commission. This defect, I held, as fatal to the success of the petition, and, accordingly, dismissed that election petition, for this lacuna as well as another, to which it is not necessary to advert at present. It is not necessary to repeat the reasons given in that case for holding that this requirement under section 117 is imperative,

As regards the vagueness about the character of the security money, that is, whether the deposit was made for the cost of the petition, due to the omission of those words in column No. 3, I do not desire to give final expression of my view as this matter has not been canvassed before me by the parties. The defect, *prima facie* appears to be a serious one but I withhold my final opinion on this subject ; because I have not had the opportunity of hearing the learned lawyers appearing on both sides on this particular matter.

The other defect, having been held fatal, I have no other option but to allow the application under section 90 (3) and dismiss the election petition in limine under section 90 (3) of the Representation of the People Act. The petitioner should pay a sum of Rs. 150 as costs of Respondent No. 1.

(Sd.) K. K. BANERJI.

The 26th September, 1957.

[No. 82/451/57-8105.]

S.R.O. 3429.—Whereas the election of Shri Harish Chandra Sharma as a member of the Lok Sabha from the Jaipur Parliamentary constituency of that Sabha was called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951) by Sarvashri Shanti Lal, son of Durlabhji, Durlabh Kunj, New Colony, Jaipur, Vishavnath Waman Kale, son of Waman Gopal Kale, Bagru-Walan-ka-Rasta, Jaipur and Komal, son of Barisal Singh, Hathi Babu Ka Bag, Jaipur;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said petition, has sent a copy of its order to the Commission;

Now, therefore, the Election Commission hereby publishes the said order of the Tribunal.

IN THE COURT OF THE ELECTION TRIBUNAL, JAIPUR.

Present:—Shri C. Jacob, Member.

ELECTION PETITION NO. 338 OF 1957.

1. Sarvashri Shanti Lal, S/o Durlabhji, by caste Hindu, resident of Durlabh Kunj, New Colony, Jaipur.
2. Vishavnath Waman Kale, S/o Waman Gopal Kale, by caste Hindu, resident of Bagru-Walan-ka-Rasta, Jaipur.
3. Komal, S/o Barisal Singh, by caste Hindu, resident of Hathi Babu Ka Bag, Jaipur.—*Petitioners.*

versus

1. Shri Harish Chandra Sharma, S/o Shri Chandra Bhan Sharma, by caste Brahmin, R/o Purani Basti, Jaipur City.
2. Shri Sadiq Ali, S/o Shri Tahir Ali, caste Muslim, resident of Borwadi, Udaipore.—*Respondents.*

Dated the 27th August, 1957.

ORDER

Respondent No. 1 has raised a preliminary objection that the petition was not maintainable as there was non-compliance of S. 82 of the Representation of the People Act, 1951 on account of non-joinder of a contesting candidate as a respondent.

The petitioners in addition to claiming a declaration that the election of respondent No. 1 to the House of People from Jaipur Parliamentary constituency was void, have also prayed that respondent No. 2 be declared to have been duly elected.

The contention of the learned counsel for respondent No. 1 was that according to S. 82 of the Act all the contesting candidates other than the petitioner are necessary parties when the petitioner in addition to claiming a declaration that the election of the returned candidate was void also claimed a further declaration that he himself or any other candidate had been duly elected. Since in this case the petitioners have also claimed this further relief it was incumbent upon them to implead Rawal Man Singh Mahar, who was a contesting candidate as a respondent, and the failure on the part of the petitioners to implead Rawal Man Singh had entailed the dismissal of the petition, under sub-clause (3) of S. 90 of the Representation of the People Act.

The petitioners' learned counsel on the other hand maintain that it was not necessary to join Rawal Man Singh as a respondent because he had retired under S. 55-A of the Act and was not a contesting candidate. In support of this contention it was argued by the learned counsel that as the term "contesting candidate" had not been defined in the Act it should be given its plain and ordinary meaning and a person who did not go to the poll and retired under S. 55-A could not be treated as a contesting candidate in the election. Reference was made to certain sections of the Act in order to show that once a candidate retired he was no more to be treated as contesting candidate. For instance the two provisos of S. 52 made it clear that at the time of counter-mandding of the poll no further nomination was necessary in the case of a person who was a contesting candidate but a fresh nomination was necessary in the case of a retired candidate. It was further urged on behalf of the petitioner that under the scheme of the Act a candidate who had retired and did not go to the poll was not required to take part in the further proceedings of the election and further that the meaning of a particular expression used in the Act was not static and was to be interpreted in the context in which it was used at the particular stage in the process of election. In this connection reference was made to Sections 50 and 64 where the term candidate was meant to apply only to the candidates who went to the poll and who had a right to be present at the polling and counting of votes. The object of S. 82, according to the learned counsel for the petitioner, was that all the candidates who actually contested the election upto the last should be before the tribunal as they were interested in the result, but a person who did not contest the election and withdrew from the fight could not be forced to come back to the arena.

The petitioner has also made an application on 9th August 1957 for amendment of the petition in order to delete the relief about the declaration of respondent No. 2 as duly elected. This application was obviously given to set right the non-compliance of S. 82. It has been opposed by respondent No. 1 on the ground that a very valuable right of limitation as well as of getting the application dismissed under S. 90 (3) of the Act had accrued and further no valid reason had been assigned for the amendment of the petition at this stage.

So far as this application is concerned I am of opinion that it should be rejected. The petitioner has not explained his mistake for including the second relief about respondent No. 2 being declared as duly elected. The application merely says that now the relief should be limited to the declaration to election of respondent No. 1 as void. The penalty prescribed for the non-compliance of S. 82 of the Act is very severe and the amendment of the petition in order to overcome that difficulty should not be lightly allowed. A very valuable right of limitation has also accrued to respondent No. 1 and I, therefore, dismiss the application for amendment of the petition.

Now the question to be decided is whether Rawal Man Singh Mahar who had admittedly retired under S. 55-A was a necessary party and should the election petition be dismissed for his non-joinder. It is true that the expres-

sion 'contesting' candidate has not been defined in S. 2 which defined other expressions used in the act, but I am unable to accept the view that its meaning changes from stage to stage. S. 38 very clearly described the term 'contesting candidate' as the candidate who were included in the list of validly nominated candidates and who had not withdrawn their candidature within the said period. Further sub-section 5 of S. 55-A also confirms the view that this definition of contesting candidate holds good wherever this word appears except as laid down in the section which reads as under:—

"Any person who has given a notice of retirement under sub-section 2 shall thereafter be deemed not to be a contesting candidate for the purpose of S. 52."

This phraseology leaves no doubt that retired candidate will be deemed to be a contesting candidate except for purposes of S. 52. If this was not the intention of the Legislature the clause "for the purposes of S. 52" would not have appeared in this sub-section, and it would have stopped short after the word contesting candidate. I, therefore, find that Rawal Man Singh Mahlar was a contesting candidate and he should have been joined as a respondent as prescribed by S. 82 of the Act.

Sub-section 3 of S. 90 is as under:—

"The tribunal shall dismiss an election petition which does not comply with the provisions of S. 81, S. 82, or S. 117 notwithstanding that it had not been dismissed by the Election Commission under S. 85."

The discretion given to the tribunal under the corresponding S. 90 (1) of the Act prior to the amendment by Act 27 of 1956 has been taken away and the tribunal is now left with no discretion. The tribunal has also no power to extend the period of limitation for making the petition. The right created by a Special Act has to be exercised within its four corners and the restrictions laid down by that particular enactment cannot be ignored or put aside. S. 90 (3) is mandatory and the election petition which did not comply with the provisions of S. 81, S. 82, or S. 117 has to be dismissed. It is also clear that it is to be dismissed as a whole as is indicated by the words "The tribunal shall dismiss an election petition". The defect in the petition about the non-compliance of S. 82 was inherent and could not have been cured even by the amendment which had been now sought.

The election petition is, therefore, dismissed under S. 90 (3) of the Representation of the People Act. The parties shall bear their own costs.

(Sd.) C. JACOB,
Election Tribunal,
Jaipur.

Pronounced in the open court, this 27th day of August, 1957.

(Sd.) C. JACOB,
Election Tribunal,
Jaipur.

[No. 82/338/57/14050.]

By order,
A. KRISHNASWAMY AIYANGAR, Secy.

